

THE GENOCIDE CONVENTION IMPLEMENTATION ACT OF
1988 (THE PROXIMIRE ACT)

MAY 11 (legislative day, MAY 9, 1988).—Ordered to be printed

Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1851]

The Committee on the Judiciary, to which was referred the bill (S. 1851) to implement the International Convention on the Prevention and Punishment of the Crime of Genocide, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

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I. PURPOSE

The purposes of S. 1851, the Genocide Convention Implementation Act of 1988, are to implement the International Convention on the Prevention and Punishment of the Crime of Genocide; to create

a new Federal offense that prohibits the commission of acts with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial or religious group; and to provide adequate penalties for such acts.

II. LEGISLATIVE HISTORY

The International Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter "the Convention" or "the treaty") was drafted shortly after World War II, when the horrors of the Holocaust were exposed and the cruel and inhuman actions of Hitler's Nazi regime were fresh in the minds of the world community. On December 9, 1948, the United Nations General Assembly approved the Convention without dissent, which entered into force on January 12, 1951. At this time, 97 nations have formally ratified the Convention.

While the U.S. delegation played a leading role in drafting the Convention and signed it just 2 days after its approval by the United Nations, the United States is not a party to the Convention. President Truman submitted the Convention for Senate advice and consent on June 16, 1949, and since that time, Presidents Kennedy, Johnson, Nixon, Carter, and Reagan have renewed the request for U.S. ratification. Over the past four decades, the Senate Foreign Relations and Judiciary Committees have held more than a dozen hearings on the Convention with testimony from more than 200 witnesses.

On May 21, 1985, the Senate Foreign Relations Committee favorably reported a resolution of ratification to the Convention containing two reservations, five understandings and one declaration. On February 19, 1986, the Senate voted 83 to 11 to approve the Convention, subject to these eight provisos. The eighth and final proviso conditions ratification by the United States on enactment of implementing legislation. The declaration instructs the President to withhold depositing the instrument of ratification with the Secretary General of the United Nations until implementing legislation has become part of U.S. law. Thus, 38 years after the U.S. delegation signed the Convention, the Senate approved it subject to the enactment of implementing legislation.

Legislation making genocide a crime under Federal law is necessary because the Convention is not self-executing. This means that the provisions of the treaty become effective under U.S. law only through the enactment of domestic legislation. Article V of the Convention states:

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of Genocide or of any of the other acts enumerated in Article III.

The Senate reinforced the view that the Convention is not self-executing when it approved the declaration conditioning U.S. ratification on the enactment of implementing legislation. As a result, passage of legislation making genocide a crime under U.S. law is nec-

essary to give effect to the treaty and is a prerequisite to formal ratification of the Convention by the United States.

Despite the 40-year history of the Genocide Convention, and repeated requests for its ratification, legislation for its implementation are relatively recent. Senators Jacob Javitz, and Hugh Scott introduced the first bill to implement the treaty in 1976. The bill was not acted upon. In the 99th Congress, Senator Thurmond, at the request of the Department of Justice, introduced S. 2803 to implement the Convention. No further action was taken on the bill.

Senators Biden, Proxmire, and Metzenbaum introduced S. 1851 on November 5, 1987. To date, 10 Senators have cosponsored this legislation, including Senators Simpson, Simon, and Kennedy of the Judiciary Committee. Congressman Rodino, chairman of the House Judiciary Committee, introduced a companion bill, H.R. 807, on January 28, 1987. These bills are substantially similar to the draft legislation submitted by the administration in the 99th and 100th Congresses. The major difference is that neither S. 1851 nor H.R. 807 authorizes the death penalty as a punishment for genocide offenses.

On February 19, 1988—exactly 2 years after the Senate approved the Convention—Senator Metzenbaum chaired a Judiciary Committee hearing on S. 1851. The committee heard testimony in support of the bill from Senator William Proxmire; Richard Schifter, Assistant Secretary of State for Human Rights; Hyman Bookbinder, on behalf of Elie Wiesel and the Ad Hoc Committee on the Genocide Treaty; Joseph Griffin, chairman, International Law and Practice section of the American Bar Association; and John Murphy, professor of law at Villanova University and chairman of the Committee on United Nations Activities of the American Bar Association. The committee also received written testimony in support of the bill from the Department of Justice, the American Jewish Committee, Amnesty International U.S.A., the Armenian Assembly of America, and the National Spiritual Assembly of the Baha'is of the United States. Trisha Katson and Gardiner Rogers, legislative director and chairman of the board of policy, respectively, of Liberty Lobby, testified against the bill.

III. DISCUSSION

The term "genocide" is described in Article II of the Convention as the commission of any of five acts with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. The concept of a treaty making genocide a crime had its roots in the struggle against Hitlerism and the overwhelming public awareness of what unrestrained racism had wrought. Three post-World War II sources shaped the concept and clothed it with binding international law.

The first source was the Nuremburg Tribunal, of which the United States was a principal architect. The tribunal gave the rule of law as applied to criminal violations of human rights a firm foundation. In November 1946, President Truman remarked that the "undisputed gain" of Nuremburg was precisely "the formal recognition that there are crimes against humanity." The tribunal was a watershed in international criminal law, as it eroded the pre-

viously accepted principle of exclusive domestic jurisdiction in the area of human rights.

The second source was Raphael Lemkin, a Polish Jew who lost 50 family members in the Holocaust. By the time Lemkin arrived at U.N. Headquarters in Lake Success during the fall of 1946, he had already developed the word "genocide." Lemkin became a one-man lobbyist who, with unflagging energy, zealous conviction and persuasive logic expressed in a dozen languages, made genocide a fundamental issue in the international community.

The third source was the U.N. General Assembly. On December 11, 1946, the Assembly passed resolution 96(I) formally declaring that "genocide is a crime under international law which the civilized world condemns and for the commission of which principals and accomplices are punishable."

The crime of genocide is among the most depraved acts that can be committed. As Senator Proxmire soberly stated in his testimony before the committee:

There is no more monstrous crime against human rights than the genocide that would destroy innocent human lives, not because the victims of genocide had done anything wrong, but because they happened to worship God in their own way, or they happened to belong to a certain ethnic or racial group.

The committee believes that enactment of this legislation would serve two very important purposes. First, S. 1851 would implement the Convention by making genocide a Federal crime with penalties that appropriately reflect its heinous and inhuman nature. Second, and equally important, it would reaffirm the values upon which our society was founded and which have been woven into the Convention: respect for the dignity and freedom of each individual and the preservation of human rights for all.

The importance of reaffirming these values has been forcefully described by witnesses and members of the committee. Elie Wiesel stated in his testimony that "what is at stake is our moral credibility in the world." Senators Biden and Metzenbaum expressed similar views in introducing the bill. In Senator Biden's words:

The United States has always been a leader in the international struggle for human rights. * * * Enactment of this legislation * * * would signal the U.S. Government's resolve to prevent future holocausts and to advance the cause of human rights around the world.

Moreover, enactment of this bill would signal to those who have been victims of genocide that the United States will not, by its silence, allow or acquiesce in a report of the Holocaust. As Senator Metzenbaum noted during the committee's hearing on S. 1851, failure to enact this legislation

would be a tragedy, and an affront to those who have themselves been victims of genocide.

In addition, the failure of the United States to implement the Convention has hindered our government's ability to pressure re-

pressive and anti-democratic governments to respect individual liberties. As Senator Kennedy noted during the committee's hearing:

Enactment of this legislation is in no way just a symbolic gesture—in order to protect and advance human rights throughout the earth, we must be a full partner in the efforts of the international bodies to promote the values upon which this nation is founded.

S. 1851 creates a new chapter 50A with three new sections (1091-1093) in title 18 of the United States Code. The first, section 1091, codifies the basic offense of genocide and provides severe penalties for persons found guilty of genocide-related crimes. In addition, this section creates a separate offense for incitement and establishes jurisdiction over an offense if it is committed within the United States or if the alleged offender is a national of the United States. Finally, section 1091 makes clear that the statute of limitations does not apply to offenses that involve the killing of members of a protected group.

Section 1092 provides that nothing in the new chapter shall be construed as precluding the application of state or local laws to the conduct proscribed, nor shall anything in the chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.

Section 1093 defines the following eight terms as they are used in the bill: "children," "ethnic group," "incites," "members," "national group," "racial group," "religious group," and "substantial part."

IV. VOTE OF THE COMMITTEE

On April 14, 1988, with a quorum present, by voice vote, the Committee on the Judiciary approved an amendment in the nature of a substitute, with amendments, and ordered the bill, S. 1851, the Genocide Convention Implementation Act (the Proxmire Act) of 1988, favorably reported. Three amendments were considered.

Grassley amendment to require more than one victimization as a predicate for a charge of genocide was adopted by voice vote.

Metzenbaum amendment to add "the Proxmire Act" to the title was approved by voice vote.

Thurmond amendment to authorize the death penalty for genocide and other crimes and to provide constitutional procedures for the implementation of the death penalty was not adopted by roll call vote as indicated:

YEAS (6)

DeConcini
Heflin
Thurmond
Hatch
Grassley
Humphrey *

NAYS (6)

Kennedy *
Metzenbaum
Leahy
Simon *
Simpson
Specter *

* By proxy

V. TEXT OF THE BILL AS REPORTED

[S. 1851, 100th Cong., 1st Sess.]

A BILL To implement the International Convention on the Prevention and Punishment of Genocide

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Genocide Convention Implementation Act of 1988 (the Proxmire Act)".

SEC. 2. TITLE 18 AMENDMENTS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 50 the following:

"CHAPTER 50A—GENOCIDE

"Sec.

"1091. Genocide.

"1092. Exclusive remedies.

"1093. Definitions.

"§ 1091. Genocide

"(a) BASIC OFFENSE.—Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

"(1) kills members of that group;

"(2) causes serious bodily injury to members of that group;

"(3) causes permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

"(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

"(5) imposes measures intended to prevent births within the group; or

"(6) transfers by force children of the group to another group;

or attempts to do so, shall be punished as provided in subsection (b).

"(b) PUNISHMENT FOR BASIC OFFENSE.—The punishment for an offense under subsection (a) is—

"(1) in the case of an offense under subsection (a)(1), a fine of not more than \$1,000,000 and imprisonment for life; and

"(2) a fine of not more than \$1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

"(c) INCITEMENT OFFENSE.—Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than \$500,000 or imprisoned not more than five years, or both.

"(d) REQUIRED CIRCUMSTANCE FOR OFFENSE.—The circumstance referred to in subsections (a) and (c) is that—

"(1) the offense is committed within the United States; or

"(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

"(e) NON-APPLICABILITY OF CERTAIN LIMITATIONS.—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or an information instituted, at any time without limitation.

"§ 1092. Exclusive remedies

"Nothing in this chapter shall be construed as precluding the application of State or local laws to the conduct proscribed by this chapter, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

"§ 1093. Definitions

"As used in this chapter—

"(1) the term 'children' means the plural and means individuals who have not attained the age of eighteen years;

"(2) the term 'ethnic group' means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

"(3) the term 'incites' means to urge another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

"(4) the term 'members' means the plural;

"(5) the term 'national group' means a set of individuals whose identity as such is distinctive in terms of nationality or national origins;

"(6) the term 'racial group' means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

"(7) the term 'religious group' means a set of individuals identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

"(8) the term 'substantial part' means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such a group is a part."

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 50 the following new item:

"50A. Genocide 1091".

VI. SECTION-BY-SECTION ANALYSIS

SECTION 1

This section sets out the title of the bill, "The Genocide Convention Implementation Act of 1988 (The Proxmire Act)." In unanimously agreeing to amend this section by adding "The Proxmire Act" to the title, the committee explicitly recognizes that this legislation is, in many ways, the result of—and a testament to—Senator Proxmire's hard work, dedication, and commitment. On January

11, 1967, Senator Proxmire announced his intention to, in the words of Senator Byrd, "wage a personal crusade on behalf of [the Genocide treaty]." On that day, Senator Proxmire declared:

The Senate's failure to act has become a national shame * * * I serve notice today that from now on I intend to speak day after day in this body to remind the Senate of our failure to act and of the necessity for prompt action.

From that day forward, Senator Proxmire took to the floor every day the Senate was in session until the treaty was finally approved on February 19, 1986. During this time, he delivered more than 3,000 floor speeches. The committee acknowledges Senator Proxmire's courage, his unbroken dedication and his tireless advocacy for human rights. It believes that this legislation should be entitled, "The Proxmire Act."

SECTION 2(a)

This section creates one new chapter (50A) and three new sections (1091-1093) in title 18 of the United States Code.

The first new section, section 1091, defines certain genocide offenses and provides penalties for their commission. Subsection (a), which codifies the basic offense of genocide, is modeled closely after Article II of the Convention. Several important changes have been made, however, and some of the language requires further elucidation:

SPECIFIC INTENT

For any person to be convicted of genocide under subsection 1091(a), that person must commit or attempt to commit one of the six enumerated acts with the specific intent to destroy, in whole or in substantial part, the protected group. This language follows the wording of the "specific intent understanding" which the Senate included in the resolution of ratification to the Convention. The purpose of this understanding, as expressed by the Senate Foreign Relations Committee in the report accompanying the Convention, is

To distinguish between the crime of genocide and other acts. It does so by specifying the type of intent that must be present for an act to constitute genocide. * * * A distinction was thus maintained between act committed with the purpose of destroying a group and all other acts, whatever their consequences.

ACTS COMMITTED IN TIME OF PEACE OR IN TIME OF WAR

The phrase "whether in time of peace or in time of war" was included in the substitute bill approved by the committee. The language tracks Article I of the Convention, which was intended to make clear that acts of genocide would be punishable regardless of whether they were committed in time of peace or in time of war. The committee intends that the phrase "whether in time of peace or in time of war" be read consistently with the "Armed Conflict Understanding" that the Senate included in the resolution of ratifi-

cation to the Convention. This understanding makes it clear that acts committed in the course of an armed conflict without the requisite specific intent do not constitute genocide. The committee further intends that the term "armed conflict," when used to interpret this section, is not restricted to armed conflicts declared under Article I, Section 8, of the Constitution. For example, the Viet Nam War would be considered an "armed conflict" under this interpretation, and therefore would be subject to the same specific intent requirement as would apply to a conflict declared under Article I, Section 8, of the Constitution.

MULTIPLE VICTIMIZATIONS

The committee approved an amendment offered by Senator Grassley providing that more than a single victimization is a necessary predicate for a charge of genocide. This language, tracking Article II of the Convention which uses the plural, recognizes that the heinous nature of genocide has resulted in multiple victims. The amendment makes clear that the general rule of construction in 1 U.S.C. 1 (that, unless the context indicates otherwise, the use of the plural includes the singular) does not apply in the new chapter 50A.

Subsection 1091(b) sets forth penalties for the basic offense of genocide. For offenses under paragraph 1091(a)(1)—those resulting in the death of members of a protected group—the punishment shall be a mandatory term of life imprisonment and a fine of not more than \$1,000,000. For all other offenses under subsection 1091(a), including attempts to kill members of a protected group, the punishment shall be imprisonment for not more than 20 years or a fine of not more than \$1,000,000, or both.

As originally introduced, S. 1851 provided for a mandatory penalty of 20 years imprisonment for any offense under subsection 1091(a) that did not result in the death of a member of a protected group. The committee agrees with the Department of Justice that the variety of conduct constituting genocide under section 1091(a) should allow for a range of sentences. At the same time, the committee believes that genocide crimes are, by definition, cruel and inhuman and that the U.S. Sentencing Commission should provide appropriately severe penalties for genocide offenses.

Subsection 1091(c) creates a new offense for incitement to commit genocide. This subsection implements Article III (c) of the Convention, which was revised to its present language at the insistence of the American delegate, specifically to accommodate the free speech protections of the United States Constitution. The committee intends that the prohibition on incitement shall be interpreted in a manner consistent with established First Amendment principles, including the Supreme Court's decision in *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

Subsection 1091(d) sets forth the circumstances that must be present for the United States to exercise jurisdiction over conduct proscribed in section 1091.

Subsection 1091(e) provides that the statute of limitations shall not apply to offenses under paragraph 1091(a)(1), namely, those that result in the death of members of a protected group.

Section 1092 makes clear that enactment of this legislation shall not preempt the right of state and local governments to enact similar legislation. This section further provides that enactment of this legislation shall not create any new Federal substantive or procedural cause of action in civil proceedings.

Section 1093 defines eight terms that are used in the new chapter 50A: "children," "ethnic group," "incites," "members," "national group," "racial group," "religious group," and "substantial part."

CHILDREN

The definition of "children" means the plural and reinforces the fact that multiple victimizations are a necessary predicate for a charge of genocide.

ETHNIC GROUP; NATIONAL GROUP; RACIAL GROUP; AND RELIGIOUS GROUP

The four groups protected under Section 1091 are the same groups protected under Article II of the Convention. The definitions of "ethnic group," "national group," "racial group" and "religious group" in the new Section 1093 mean a set of individuals whose identity is distinctive in terms of certain common characteristics of the individuals in the group.

INCITES

The definition of "incites" follows the Supreme Court's decision in *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). The court held in *Brandenburg* that advocacy is constitutionally protected unless it "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

MEMBERS

The definition of "members" means the plural and reinforces the fact that multiple victimizations are a necessary predicate for a charge of genocide.

SUBSTANTIAL PART

The term "substantial" was inserted before the word "part" at the first place that it appeared in subsection 1091(a) in the substitute bill approved by the committee. The term "substantial" was used in the Senate Foreign Relations Committee report on the Convention:

The aim of the Convention is to deal with action against large numbers of people. The perpetrator must intend to affect a substantial number of the group's members by his acts for those acts to constitute genocide. "Substantial" means a large enough number of individuals such that their destruction or loss would cause the destruction of the group as a viable entity.

This committee agrees with the interpretation that the basic intent of the Convention is to address acts against large numbers of people. The committee intends, however, that "substantial part"

means a group large enough that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part. The definition of "substantial part" in section 1093 makes this meaning explicit.

SECTION 2 (b)

This section makes a clerical amendment to the table of chapters in part I of title 18 of the United States Code.

VII. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 19, 1988.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1851, the Genocide Convention Implementation Act of 1988, as ordered reported by the Senate Committee on the Judiciary, April 14, 1988.

The bill would classify genocide as a federal offense, and would establish penalties for those who commit genocide. Based on information provided by the Department of Justice, CBO estimates that enacting this legislation would not affect the budget of the federal government, or of any state or local government.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

VIII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the Act will not have direct regulatory impact.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * *

PART I—CRIMES

Chapter	Sec.
50. Gambling.....	1081
50A. Genocide.....	1091

CHAPTER 50—GAMBLING

* * * * *

CHAPTER 50A—GENOCIDE

Sec.
1091. Genocide.
1092. Exclusive remedies.
1093. Definitions.

§ 1091. Genocide

(a) **BASIC OFFENSE.**—Whoever, in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

- (1) kills members of that group;
 - (2) causes serious bodily injury to members of that group;
 - (3) causes permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
 - (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
 - (5) imposes measures intended to prevent births within the group; or
 - (6) transfers by force children of the group to another group;
- or attempts to do so, shall be punished as provided in subsection (b).

(b) **PUNISHMENT FOR BASIC OFFENSE.**—The punishment for an offense under subsection (a) is—

- (1) in the case of an offense under subsection (a)(1), a fine of not more than \$1,000,000 and imprisonment for life; and
- (2) a fine of not more than \$1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c) **INCITEMENT OFFENSE.**—Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than \$500,000 or imprisoned not more than five years, or both.

(d) **REQUIRED CIRCUMSTANCE FOR OFFENSE.**—The circumstance referred to in subsections (a) and (c) is that—

- (1) the offense is committed within the United States; or
- (2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(e) **NON-APPLICABILITY OF CERTAIN LIMITATIONS**—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or an information instituted, at any time without limitation.

§ 1092. Exclusive remedies

Nothing in this chapter shall be construed as precluding the application of State or local laws to the conduct proscribed by this chapter, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

§ 1093. Definitions

As used in this chapter—

(1) the term “children” means the plural and means individuals who have not attained the age of eighteen years;

(2) the term “ethnic group” means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

(3) the term “incites” means to urge another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

(4) the term “members” means the plural;

(5) the term “national” group means a set of individuals whose identity as such is distinctive in terms of nationality or national origins;

(6) the term “racial” group means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

(7) the term “religious group” means a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

(8) the term “substantial part” means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such a group is a part.

ADDITIONAL VIEWS OF MESSRS. THURMOND, DeCONCINI, HATCH, AND GRASSLEY

The Judiciary Committee recently approved this legislation to implement the International Convention on the Prevention and Punishment of Genocide. This legislation would provide criminal penalties for persons convicted of genocide. Further, this legislation is the final step necessary in order for the United States to ratify the Genocide treaty.

Genocide is a deplorable act that should not be tolerated anywhere in the world. Therefore, any one convicted of such a reprehensible crime is deserving of severe punishment. The report states that the Committee has determined that the penalties set forth in this legislation are appropriate. Generally in establishing the punishment for a crime, the punishment should fit the crime. This bill fails in that regard. Under this bill, a person who commits an act of genocide which results in death could receive the maximum sentence of life imprisonment and a \$1 million fine. However, that person could not receive the death penalty for such actions under this legislation.

Currently, the death penalty is authorized for numerous Federal crimes such as first-degree murder (18 U.S.C. 1111); first-degree murder or kidnaping resulting in the death of the President, a Member of Congress, a Department head, or a Justice of the United States (18 U.S.C. 1751 and 351); treason (18 U.S.C. 794) and espionage (18 U.S.C. 2381). Genocide, without a doubt, equals those crimes in terms of seriousness and should be an offense which is subject to imposition of the death penalty. It is ironic to think that a person convicted of murder could receive the death penalty while a person who commits mass execution (i.e., murder) of a whole or substantial part of a particular group can only receive life imprisonment. Genocide is a crime for which the death penalty is an appropriate and necessary punishment.

With regard to the death penalty, the Supreme Court has ruled that it is constitutional when imposed in accordance with procedures designed to guide the factfinder in determining whether to impose such a penalty. Currently, there are no Federal death penalty procedures in place. Therefore, the statutes which provide for the death penalty are inoperative. However, in the last few Congresses, the Judiciary Committee has considered and approved death penalty procedures bills. In the 98th Congress, the Senate passed a death penalty procedures bill by a vote of 63-32. When the Committee considered the genocide implementing legislation, Senator Thurmond offered an amendment to provide the death penalty for genocide and other crimes as well as to provide the constitutional procedures. This amendment was not adopted on a 6-6 tie vote. We believe that death penalty procedures should be put in

place for genocide and other crimes. At the very minimum, the death penalty should be authorized for genocide.

Genocide is one of the most heinous crimes. As such, it is certainly deserving of the death penalty if perpetrated in the United States or by a national of the United States. Providing the death penalty as a punishment for genocide underscores the seriousness of such an act and as well provides a sense of balance and proportion in the punishment prescribed for Federal crimes.

